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20 IN THE UNITED STATES DISTRICT COURT
21
22 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

23
24 **ERNEST J. BROOKS, III,**

25 Petitioner,

26 v.

27 KEN CLARK, WARDEN,

28 Respondent.

29 **08cv0125 JM (BLM)**

30 **EX PARTE MOTION FOR
31 ENLARGEMENT OF TIME
32 TO FILE (1) MOTION TO
33 DISMISS OR (2) ANSWER TO
34 PETITION FOR WRIT OF
35 HABEAS CORPUS; and
36 DECLARATION OF
37 ELIZABETH A. HARTWIG**

38 **Judge: Hon. Barbara L. Major**

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40 **EX PARTE MOTION FOR ENLARGEMENT OF TIME TO FILE (1) MOTION TO
41 DISMISS OR (2) ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS**

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43 **COMES NOW RESPONDENT KEN CLARK**, Warden, California Substance Abuse
44 Treatment Facility/State Prison, Corcoran, California, pursuant to Rule 6(b) of the Federal Rules of
45 Civil Procedure and requests this Court order an enlargement of time in which to file the Motion to
46 Dismiss or Answer to the Petition for Writ of Habeas Corpus in the above-captioned case.

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48 Respondent's Motion to Dismiss is due on or before **April 28, 2008** and the Answer to
49 the Petition for Writ of Habeas Corpus is presently due on or before **May 12, 2008**. Respondent

1 requests an enlargement of time of **thirty days**, to **May 28, 2008**, to file the Motion to Dismiss the
2 Petition, **or alternatively, June 12, 2008**, to file the Answer to the Petition.

3 Declarant has not requested any previous extensions.

4 The state appellate record had to be requested from archives, and has only recently been
5 received. There has not yet been time to review the records or select and copy the portions that
6 would be germane to a response to the Petition for Writ of Habeas Corpus.

7 Petitioner has filed numerous petitions in state court, and Declarant has requested copies
8 of those petitions, which are still being received piecemeal.

9 Declarant is reviewing the Petition for Writ of Habeas Corpus to determine whether a
10 Motion to Dismiss or Answer is appropriate, and then correlate the portions of the state record which
11 would be required for the Court's decision.

12 Declarant requests an additional thirty days to complete the Motion to Dismiss or Answer
13 for filing with this Court. Declarant has been unable to complete the Motion to Dismiss or Answer
14 prior to April 28, 2008 because of other work obligations which were assigned prior to *Brooks v.*
15 *Clark*, to wit, *People v. Patrick Robert English*, No. G038624, Respondent's Brief filed March 21,
16 2008; *People v. Daniel Parra*, No. D050069, Respondent's Brief filed March 27, 2008; *People v.*
17 *Robert James Brobst*, No. E042987, Respondent's Brief filed March 27, 2008; *People v. Arthur*
18 *Deshawn Smith*, No. E042145, Respondent's Brief filed April 9, 2008; *People v. Ed Emmanuel*
19 *Knox*, No. E043342, Respondent's Brief filed April 17, 2008; *People v. Singletary*, Appellate No.
20 G038283, oral argument April 21, 2008; *Fields v. Ryan*, Ninth Circuit No. 06-55458, Respondent's
21 Brief to be filed April 22, 2008.

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CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court grant the
enlargement of time to May 28, 2008 to file the Motion to Dismiss the Petition and June 12, 2008
to file the Answer to the Petition for Writ of Habeas Corpus.

Dated: April 22, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

DANE R. GILLETTE
Chief Assistant Attorney General

GARY W. SCHONS
Senior Assistant Attorney General

BARRY CARLTON
Supervising Deputy Attorney General

/s/ Elizabeth A. Hartwig

ELIZABETH A. HARTWIG
Deputy Attorney General
Attorneys for Respondent

EAH:lb
70121587.wpd
SD2008800668

1 **DECLARATION OF ELIZABETH A. HARTWIG IN SUPPORT OF EX PARTE**
2 **MOTION FOR ENLARGEMENT OF TIME**

3 Elizabeth A. Hartwig hereby declares under penalty of perjury as follows:

4 She is a deputy attorney general for the State of California and has been assigned to
5 prepare all necessary pleadings in the case of *Brooks v. Clark*, Case No. 08 CV0125 JM (BLM).
6 She is requesting an extension of time of thirty days to complete the Motion to Dismiss the Petition
7 or Answer to the Petition for Writ of Habeas Corpus for the following reasons.

8 The state appellate record has only recently been received from state archives, but has not
9 yet been reviewed or copied for lodgment with this Court, when the Motion to Dismiss or Answer
10 to the Petition for Writ of Habeas Corpus is filed.

11 Copies of Petitioner's multiple filings in state court have been requested and are being
12 received piecemeal. Those documents must be reviewed in conjunction with the Petition to
13 determine whether a Motion to Dismiss or answer to the Petition is appropriate. Then those
14 documents will also have to be copied for lodgment with the Court.

15 Declarant has not been able to complete a Motion to Dismiss or Answer to the Petition
16 because of other work obligations which were assigned prior to *Brooks v. Clark*, to wit,
17 *People v. Patrick Robert English*, No. G038624, Respondent's Brief filed March 21, 2008; *People*
18 *v. Daniel Parra*, No. D050069, Respondent's Brief filed March 27, 2008; *People v. Robert James*
19 *Brobst*, No. E042987, Respondent's Brief filed March 27, 2008; *People v. Arthur Deshawn Smith*,
20 No. E042145, Respondent's Brief filed April 9, 2008; *People v. Ed Emmanuel Knox*, No. E043342,
21 Respondent's Brief filed April 17, 2008; *People v. Singletary*, Appellate No. G038283, oral
22 argument April 21, 2008; *Fields v. Ryan*, Ninth Circuit No. 06-55458, Respondent's Brief to be filed
23 April 22, 2008.

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1 Declarant has not spoken with Petitioner to personally inform him of this request for
2 enlargement of time, because he is representing himself in the habeas corpus proceedings, and he
3 is presently incarcerated in state prison. A copy of the request for enlargement of time, together with
4 counsel's declaration and proposed order, are being served on Petitioner by mail.

5 I hereby declare under penalty of perjury that the foregoing statements are true and
6 correct.

7 Executed this 22nd day of April, 2008, at San Diego, California.

8 /s/ Elizabeth A. Hartwig
9 ELIZABETH A. HARTWIG
10 Deputy Attorney General

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2 **DECLARATION OF SERVICE BY U.S. MAIL**

3 Case Name: **Brooks v. Clark, Warden** No.: **08cv0125 JM (BLM)**

4 I declare:

5 I am employed in the Office of the Attorney General, which is the office of a member of the
6 California State Bar, at which member's direction this service is made. I am 18 years of age or older
7 and not a party to this matter. I am familiar with the business practice at the Office of the Attorney
8 General for collection and processing of correspondence for mailing with the United States Postal
9 Service. In accordance with that practice, correspondence placed in the internal mail collection
10 system at the Office of the Attorney General is deposited with the United States Postal Service that
11 same day in the ordinary course of business.

12 On April 22, 2008, I served the attached **EX PARTE MOTION FOR ENLARGEMENT**
13 **OF TIME TO FILE (1) MOTION TO DISMISS OR (2) ANSWER TO PETITION FOR**
14 **WRIT OF HABEAS CORPUS; and DECLARATION OF ELIZABETH A. HARTWIG** by
15 placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
16 internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite
17 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

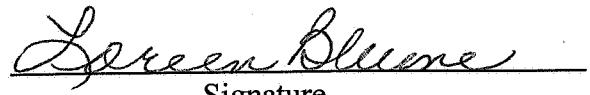
18 **ERNEST J. BROOKS, III**
19 **T-61049**
20 **CALIFORNIA SUBSTANCE ABUSE**
TREATMENT
FACILITY/STATE PRISON
P.O. BOX 5242
21 **CORCORAN, CA 93212-5242**
22 **[Pro Se -- 1 Copy]**

23 I declare under penalty of perjury under the laws of the State of California the foregoing is
24 true and correct and that this declaration was executed on **April 22, 2008**, at San Diego, California.
25

26 Loreen Blume

27

Declarant


28 Signature